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and Jazplus, LLC*

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

KELLY TOYS HOLDINGS, LLC;
JAZWARES, LLC; KELLY
AMUSEMENT HOLDINGS, LLC;
and JAZPLUS, LLC,

Plaintiffs,

vs.

BUILD-A-BEAR WORKSHOP, INC.,

Defendant.

Case No. 2:24-cv-1169-JLS (MARx)

**PLAINTIFFS' ANSWER TO BUILD-
A-BEAR WORKSHOP, INC.'S
COUNTERCLAIMS**

1 Plaintiffs and Counter-Defendants Kelly Toys Holdings, LLC, Jazwares, LLC,
2 Kelly Amusement Holdings, LLC and Jazplus, LLC (together, “Plaintiffs”), through
3 and by its undersigned attorneys, hereby answers Defendant and Counter-Plaintiff
4 Build-A-Bear Workshop, Inc.’s (“Build-A-Bear”) Counterclaims (ECF 37) as follows:

5 **PARTIES, JURISDICTION, AND VENUE**¹

6 1. Admit.

7 2. Plaintiffs admit that Kelly Toys Holdings, LLC is a Delaware limited
8 liability company with its principal place of business in California.

9 3. Plaintiffs admit that Kelly Amusement Holdings, LLC is a Delaware
10 limited liability company with its principal place of business in New York.

11 4. Plaintiffs admit that Jazwares, LLC is a Delaware limited liability
12 company with its principal place of business in Florida.

13 5. Plaintiffs admit that Jazplus, LLC is a Delaware limited liability company
14 with its principal place of business in Florida.

15 6. Admit.

16 7. Admit.

17 8. Admit.

18 9. Plaintiffs admit that personal jurisdiction and venue are proper over
19 Plaintiffs in this case in the Central District of California.

20 10. Plaintiffs admit that there is an actual, ripe, and justiciable controversy
21 between Plaintiffs and Build-A-Bear.

22
23
24
25
26
27 ¹ Plaintiffs use the headings in Build-A-Bear’s Counterclaims for ease of reference.
28 They are not intended to be, and shall not be considered, an admission or concession
that Plaintiffs agree with the truth of any heading.

BACKGROUND FACTS

Build-A-Bear and Its Skoosherz® Plush Toys

11. Plaintiffs are without sufficient knowledge or information to admit or deny the allegations, and therefore deny the same.

12. Plaintiffs are without sufficient knowledge or information to admit or deny the allegations, and therefore deny the same.

13. Plaintiffs are without sufficient knowledge or information to admit or deny the allegations, and therefore deny the same.

14. Plaintiffs are without sufficient knowledge or information to admit or deny the allegations, and therefore deny the same.

15. Plaintiffs are without sufficient knowledge or information to admit or deny the allegations, and therefore deny the same.

16. Plaintiffs admit that Build-A-Bear publicly announced Skoosherz in January 2024, but deny the remainder of the allegation.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Plaintiffs are without sufficient knowledge or information to admit or deny the allegations, and therefore deny the same.

22. Denied.

23. Plaintiffs are without sufficient knowledge or information to admit or deny the allegations, and therefore deny the same.

Counterclaim-Defendants' Squishmallows Products

24. Admit.

25. Denied.

26. Denied.

1 27. Plaintiffs admit that they assert trade dress infringement by Build-A-Bear
2 and that Build-A-Bear is seeking declarations of invalidity, unenforceability, and non-
3 infringement. Plaintiffs deny the remainder of the allegations.

4 28. Denied.

5 29. Denied.

6 30. Denied.

7 31. Denied.

8 32. Denied.

9 33. Denied.

10 34. Plaintiffs admit that the quoted phrase has been used with certain
11 Squishmallows. Plaintiffs deny the remainder of the allegations.

12 35. Denied.

13 36. Plaintiffs admit that the quoted terms have been used with certain
14 Squishmallows. Plaintiffs deny the remainder of the allegations.

15 37. Admit.

16 38. Denied.

17 39. Denied.

18 40. Denied.

19 **Many Squishy Plush Toys Existed Before and During**
20 **Squishmallows' Entry into the Market and Still Exist Today (Denied)**

21 41. Denied.

22 42. Denied.

23 43. Denied.

24 44. Denied.

25 45. Plaintiffs admit that a non-party may have also introduced infringing
26 products. Plaintiffs deny the remainder of the allegations.

27 46. Plaintiffs admit that Build-A-Bear launched its Kabu line of products in
28 2018. Plaintiffs deny the remainder of the allegations.

1 47. Denied.

2 48. Denied.

3 49. Denied.

4 50. Denied.

5 **Build-A-Bear's Skoosherz® Plush Toys Are Clearly Labeled as**
6 **Associated With Build-A-Bear and Distinguished from**
7 **Counterclaim-Defendants' Squishmallows Products (Denied)**

8 51. Denied.

9 52. Denied.

10 53. Denied.

11 54. Denied.

12 55. Denied.

13 56. Plaintiffs admit that they use the SQUISHMALLOWS trademark with
14 Squishmallows products. Plaintiffs deny the remainder of the allegations.

15 57. Denied.

16 58. Denied.

17 59. Denied.

18 60. Denied.

19 61. Plaintiffs are without sufficient knowledge or information to admit or
20 deny the allegations, and therefore deny the same.

21 62. Denied.

22 **Build-A-Bear's Frog and Axolotl Skoosherz® Are Not Substantially Similar to**
23 **and Were Not Copied From Counterclaim-Defendants' Squishmallows (Denied)**

24 63. Denied.

25 64. Denied.

26 65. Denied.

27 66. Denied.

28 67. Denied.

FIRST CAUSE OF ACTION

(Declaratory Judgment of Invalidity and Unenforceability of the Claimed Squishmallows Trade Dress – 28 U.S.C. §§ 2201 and 2202)

68. Plaintiffs repeat their admissions and denials from all the foregoing paragraphs as if fully incorporated herein.

69. Denied.

70. Admit.

71. Plaintiffs admit that they enforce their intellectual property rights by filing cases in federal court against infringers. Plaintiffs deny any intended implication in this allegation.

72. Plaintiffs admit that they filed the referenced lawsuit in Florida and this case in California, and that they enforce their intellectual property rights in court against infringers. Plaintiffs deny any intended implication in this allegation.

73. Admit.

74. Plaintiffs deny that Build-A-Bear is entitled to the requested relief.

75. Admit.

76. Denied.

SECOND CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of the Claimed Squishmallows Trade Dress – 28 U.S.C. §§ 2201 and 2202)

77. Plaintiffs repeat their admissions and denials from all the foregoing paragraphs as if fully incorporated herein.

78. Denied.

79. Denied.

80. Admit.

81. Denied.

82. Denied.

THIRD CAUSE OF ACTION

**(Declaratory Judgment of Non-Infringement of the Squishmallows Copyrighted
Works – 28 U.S.C. §§ 2201 and 2202)**

83. Plaintiffs repeat their admissions and denials from all the foregoing paragraphs as if fully incorporated herein.

84. Denied.

85. Denied.

86. Admit.

87. Denied.

88. Denied.

PRAYER FOR RELIEF

Plaintiffs deny that Build-A-Bear is entitled to any relief for any of its Counterclaims.

JURY DEMAND

Plaintiffs demand a trial by jury on any and all legal claims and issues.

Dated: September 9, 2024

HUESTON HENNIGAN LLP

By: Sourabh Mishra
Sourabh Mishra

*Attorneys for Kelly Toys Holdings, LLC;
Jazwares, LLC; Kelly Amusement
Holdings, LLC; and Jazplus, LLC.*